IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/12/2002

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice P.D. DINAKARAN

CRIMINAL APPEAL No.282 OF 1998

1. Nataraj
2. Perumal
3. Kumaresan
4. Gajendran
5. Balu ..... Appellants

-Vs-

STATE by Inspector of Police
Kalavai Police Station
Vellore District ..... Respondents

Appeal under Sec.374 of Crl.P.C. against the conviction
and sentence passed by the Sessions Judge, Vellore
in S.C. No.16 of 1997

For Appellants :: Mr. Ashokkumar
for Mr. T. Sudanthiram
For Respondent :: Mr. A. Navaneethakrishnan
Addl. Public Prosecutor

:JUDGMENT

V.S. SIRPURKAR, J.

This appeal is directed against the verdict of conviction and sentences awarded by the Principal Sessions Judge, Vellore against all the five appellants. They have been convicted for the offences under Secs.148, 302 and 427 as also 324 I.P.C.

2. The prosecution story as revealed is that Shankar (deceased) along with his wife Malliga (P.W.1) were residing in the field belonging to Janakiraman (P.W.5) as they were cultivating that field since Janikaraman was residing at Chennai. Accused 1 and 2 are the close relatives of Janakiraman while, accused 3 to 5 are the close relatives of accused 1 and 2. Accused persons felt a grudge against the deceased that it was their right to cultivate the lands of Janakiraman because of their kinship.

3. On 30-3-1996 at about 10.30 p.m., the accused persons, after forming an unlawful assembly with an object of eliminating Shankar, actually came to the field of Janakiraman where Shankar resided in a house and at that time all of them were armed with deadly weapons. They assaulted Shankar suggesting that unless he was removed, he was not going to vacate the field. All the accused persons pounced on him and assaulted him with deadly weapons with which they were all laced. As a result of this, Shankar died on the spot. At the time when the dastardly attack took place, Shankar's wife Malliga (P.W.1), Maha (P.W.2), Venkatesan (P.W.3) and Ragothaman (P.W. 4) and others were present. It is also the case of the prosecution that during this assault, some of the witnesses also got injured as even they were not spared since they tried to intervene and rescue Shankar. The incident took place at about 10.30 p.m. within the juris diction of Kalavai Police Station.

4. Malliga (P.W.1) along with some other persons went and sought medical help from Dr. Sengottayyan (P.W.8) first and then reported the matter to the Kalavai police station. On the basis of this, police immediately sprung into action. The express First Information Report was prepared and sent to the Judicial Magistrate, Arcot while the other investigation was conducted by Kuppan (P.W.14), sub Inspector of Police, Kalavai Police Station. The investigating officer executed the spot mahazar, drew the rough sketch and also seized the material objects, some of which were lying on the spot. The accused persons had not remained content after committing the murder of Shankar and injuring the other witnesses but had also caused extensive damage to the autorickshaw and the household articles. In fact the autorickshaw was found to be thrown in the nearby well. It has come in the prosecution case also that the appellants were seen by Ragothaman (P.W.4) at about 7.00 p.m. together duly armed. After the investigation, charge-sheet was filed against the accused persons.

5. The names of the accused persons reached via the First Information Report in barely one and a half hours from the incident even along with the details of the weapons which they had used. Eventually, the accused persons were arrested and after the matter committed to the sessions, they were tried for the aforementioned offences. Charges were duly framed.

6. All the accused persons abjured their guilt and their defence seems to be that the deceased Shankar and his wife were bootleggers. They used to brew arrack or get arrack from outside and sell the same in the village. It is suggested that the other witnesses who were present at the time were none else but the persons dealing in arrack and that all these persons were assaulted by unknown villagers who had a wrath against these arrack-sellers and in the process Shankar lost his life and the witnesses got injured. It is also tried to be suggested that it is out of enmity that Malliga (P.W.1) gave the names of the accused persons and that they have been falsely implicated.

7. Before the Sessions Court, the prosecution relied on the evidence of the eye-witnesses as also on the circumstantial evidence like the recovery of blood-stained weapons, etc. At the stage of trial, Maha (P.W.2)

turned hostile. The learned Sessions Judge, on the basis of appreciation of evidence, came to the conclusion that the prosecution had proved the charges as against the five appellants for the offences under Sec.302 read with Sec.149; 324 read with 149 (substantive charge of Sec.324 was held to be proved against some of the accused). They have also been convicted for the offence under Sec.427 on the ground of mischief by causing damage to the autorickshaw. They have also been convicted for the offence under Sec.148 on the ground that they were the members of the unlawful assembly and were armed with deadly weapons and that the members of the unlawful assembly committed the offences. It is against this verdict that the appellants have come up in appeal.

8. Learned counsel for the defence, Mr. Ashok Kumar, very painstakingly took us through the whole evidence and more particularly that of the evidence of Malliga (P.W.1), Venkatesan (P.W.3), the evidence of the medical officers and the investigating officer as also that of the panchas in whose presence the accused had allegedly accepted to show the places where the weapons used in the crime were hidden and produced the same. Learned counsel has tried to suggest that the investigation in this case is tainted and that it is not a honest investigation. Learned counsel directed his ire against the First Information Report and pointed out that the First Information Report itself was a suspicious document and possibly could not have been recorded at the time when it is claimed to have been recorded. According to the learned counsel, the names of the accused persons were well thought about perhaps by the investigating agency with the co-operation of the witnesses and then a well cooked first information report was concocted which was full of graphic description of the names of the accused, weapons handled by them and the role played by each of them. Learned counsel says that the first information report was sent to the Judicial Magistrate, Arcot only on 2-4-1996 which itself would suggest that the first information report was deliberately held back at least till the fifth accused was arrested on 2-4-1996. Carrying the same thread, the learned counsel suggests that once this position is obtained then the evidence of Malliga (P.W.1), who was an interested witness and having a shady past, cannot be relied upon by the court and that the learned Sessions Judge had erred in accepting her testimony. Learned counsel further points out that in so far as the evidence of Venkatesan (P.W.3) is concerned, his evidence has been rejected even by the trial court because he had admitted in the cross-examination that he had seen the accused for the first time in the court. Learned counsel suggests that it was impossible for this witness to have stated the names and it was obvious that he had given a parrot like statement before the police perhaps at the behest of the wife of the deceased, P.W.1 Malliga. In so far as the circumstantial evidence of discovery is concerned, learned counsel says that all that evidence is highly farcical. According to the learned counsel, the discoveries were stage-managed and at any rate could not be said to be established so as to be acted upon. Learned counsel further suggested that on the other hand, the evidence suggested by the prosecution accepted more probable because of the nefarious activities of the deceased, his wife and his friends who were all bootleggers or dealing in illicit arrack, the villagers had come there in large numbers and had pounced upon the deceased and in that the deceased was done to death. Learned counsel suggests that the charge against the accused for the unlawful assembly was limited only to the five accused. It did not mention any other persons.

Therefore, the story of the prosecution was that the unlawful assembly consisted only all these five persons which was highly improbable in the wake of the admissions given by some of the witnesses that they saw about seven to eight or ten persons. Learned counsel, therefore, suggests that the whole story was a make-belief affair and the accused persons were liable to be acquitted.

9. As against this, the Public Prosecutor supported the judgment and suggested that Malliga (P.W.1) was a truthful witness and had nothing to hide and she would be more interested in seeing that the real culprits would not go unpunished. Learned Public Prosecutor also argued that merely because Malliga (P.W.1) was the wife of the deceased, she could not be branded as the interested witness and at the most her evidence was liable to be examined with caution in mind, which was done by the trial court. He points out that the first information report was genuine and the theory that the express report of the first information report was sent vide Ex.P-17 only on 2-4-1996 was highly incorrect. According to him, the first information report was received by the Magistrate who had put his signature only on 31-3-1996, i.e. the next day of the incident. He also supported the evidence regarding the discoveries and contended that the prosecution had fully proved the case and the accused were rightly convicted.

10. On this conflicting background, it will be better for us to see the evidence of the alleged eye-witnesses, they being Malliga (P.W.1), Maha (P.W.2) and Venkatesan (P.W.3).

11. Malliga (P.W.1) is the wife of the deceased and there can be no dispute that she was a resident of the same village where the accused persons were also living. In fact, accused persons have their fields in the vicinity of the village where the witness was living along with her deceased husband. She has fully described that she was sitting along with the deceased and the others like Maha (P.W.2), Venkatesan (P.W.3), Kumar and some others on the spot and at that time, the accused persons came fully armed. The witness had specifically described the arms in the hands of each of the accused suggesting that A-1 was having the knife; A-2 was having the rice-pounder; A-3 was having the cycle-chain; while A-4 and A-5 were armed with sticks. The witness further deposed that all these accused persons had started assaulting her husband by first uttering the words to the effect that unless the deceased was eliminated he would not vacate the lands. She then goes on to depose that when she tried to save the deceased, she was also assaulted by the fourth accused. The witness has specifically stated that they pushed her husband from the cot where he was sitting and inflicted cut injuries on the rear portion of the neck. This act she ascribes to the first accused. She also asserted that the second accused assaulted Shankar on the back of the head with the rice-pounder and that the third accused assaulted on the chest and body of Shankar repeatedly with the cycle-chain. She also asserted that accused 4 and 5 beat Shankar on head and body with sticks and that as a result of that Shankar fell in front of the house. She claims that even the guests were not spared and that Kumar and Maha (P.W.2) were assaulted by the accused persons. She then refers to the accused persons pushing the autorickshaw in the well nearby and damaging the same.

12. She claims that when she approached, her husband was injured and found to be dead and, therefore, she proceeded firstly to the private doctor for getting herself treated as she herself was injured along with other witnesses and then went to the police to gave a complaint. There is very little or no cross-examination on this main subject in her evidence. The cross-examination revolves around some factors which are not important in reality. As regards the evidence of this witness, it will have to be said that her presence on the spot was most natural as she was in her house along-side her husband. Though it can be said that she would be an interested witness, being the wife of the deceased, it cannot be forgotten that she would not want the real assailants to go scot-free. What is tried to be argued is that she had and was likely to have grudge against accused 1 to 5 as they attempted to deprive of her livelihood by ousting her from the field. However, there is greatest assurance to the evidence of this witness as she has disclosed the names of the accused in the First Information Report within barely one and a half hours of the incident. A whole scene can be imagined that in her presence some accused persons, duly armed, assaulted her husband, herself and the persons present in her house; the husband breathed last; the other witnesses have to took to their heels in order to save themselves and she is also injured. Under these circumstances, if P.W.1 Malliga chose to go to the police barely within one and a half hours, it cannot be said that she has given all the names out of her own wild imagination and more particularly actuated by malice. The injuries on her person were firstly proved by the Dr. Sengottayyan (P.W.8), who was a private medical practitioner in the village, to whom she had gone for treatment. That would also be natural. After that, injuries on her person are also deposed by the other doctor, Dr. P. Rajeswari (P.W.9) who has also issued a wound certificate to this witness, vide Ex.P-5. The doctor has clearly deposed that she was brought by the police along with one Kumar who had also suffered injuries for whom the doctor had given the medical certificate vide Ex.P-4. The existence of the injuries on the person of this witness would lend all the more support to her testimony.

13. Again it cannot be forgotten that at the relevant time, there was light available which is clear from the evidence of the investigating officer as also the spot mahazar witness Ramachandran (P.W.6). In fact, this witness had made a claim that at the time when the spot mahazar was drawn at about 5.30 a.m., the bulb was still burning. Thus, P.W.1 Malliga had the light available for identifying the accused persons. On the backdrop that the accused persons were all known to her, it would not be difficult for this witness to identify the accused persons even along with their weapons. It cannot be forgotten that Malliga (P.W.1) herself has been beaten. There is slight discrepancy in her evidence regarding the role played by the accused 4 and 5 but, considering the mental state of the witness at the time of the incident, it has to be said that she was able to identify the accused persons who were named immediately.

14. Mr. Ashokkumar very earnestly pointed out that Malliga (P.W.1) was a courtbird and a bootlegger. Much effort was done in the cross-examination also to suggest that she had suffered convictions in the prohibition offences and that her husband also had suffered the convictions.

On this basis, the learned defence counsel suggests that Malliga (P.W.1) has a shady past and such self-proclaimed criminal should not be believed particularly when her evidence is almost the sole basis for the conviction.

15. It cannot be disputed that the witness was convicted and so was her husband for the prohibition offences but that does not by itself take out the rigour of her evidence. What is to be seen is as to whether in spite of her shady past, she was telling the truth in respect of the assault. In this behalf, she is well corroborated by the evidence of Venkatesan (P.W.3), who specifically deposed regarding the assault at the relevant time and on the same place as deposed by Malliga (P.W.1). The fact of assault, therefore, has to be accepted and in respect of the other minor details like the availability of light; the number of accused persons, etc., the evidence of Malliga (P.W.1) stands completely corroborated by the evidence of Venkatesan (P.W.3). The Sessions Judge has not chosen to rely on the evidence of Venkatesan (P.W.3) wholly because of his admission during the crossexamination that he was seeing the accused for the first time and had not known them earlier. Though we have our own reservations regarding this aspect of non-identification of the accused persons, we are of the clear opinion that at least in so far as the other aspects of the incident are concerned, the witness was telling the truth. Even granting that he did not identify the accused persons, the fact that number of persons came; they were all armed to the teeth; they assaulted Shankar and in that incident he himself, Kumar and Maha were injured can be safely accepted on the basis of his evidence also. It is undoubtedly true that he has admitted that he had not seen the accused persons earlier. Learned Public Prosecutor, however, tried to contend that even if he had identify the accused persons for the first time in the court, that would be completely admissible evidence of identification. There is no question of the admissibility of the evidence. The question is of the 'reliability' of such a claim. In our opinion, the Sessions Judge has rightly chosen not to believe this witness for the purposes of identification of the accused.

16. It was also criticised by the defence that the identification parade could have been held and not holding the identification parade even in a case of a witness who did not know the names of the accused was a major defect in the identification. If, indeed, the names of the accused were not known to the witness, it would have been better to hold the identification parade but, the non-holding of the identification parade would not demolish their evidence to which we have referred to earlier. There cannot be a dispute that this witness was present at the relevant time. He has established the presence of Malliga (P.W.1) and he has also described the way the assault was made on deceased Shankar, which evidence renders corroboration to the evidence of Malliga (P.W.1). To that extent, we would accept the evidence of Venkatesan (P.W.3).

15. A very serious criticism was made on account of the claim of Malliga (P.W.1) that she saw all the accused persons along with the father of the fifth accused in the custody of the police on the very next day, i.e. on 31-3-1996. We must say that the evidence is not very clear on that issue and it has only to be inferred that this happened on the next day. However,

it is clear that the witness was committing error in respect of the day on which he saw the accused persons in the custody. Admittedly, the accused persons were taken in custody only later on in the first week of the next month after they had surrendered on 2-4-1996. Therefore, this claim of the witness could at the most be said to be an aberration and indeed, it is unthinkable that the accused persons who were taken into custody were let off by the police so as to enable them to surrender later on. Learned counsel for the defence, however, tried to use that circumstance in his favour by saying that the accused persons were indeed taken into custody and then on that basis the First Information Report was prepared at the instance of the investigating officer. When we see the cross-examination of the investigating officer, the first claim made is to that effect. Learned counsel very seriously assailed the First Information Report for the obvious reasons that this First Information Report if could be put in doubt that would completely remove the insulation of the evidence of Malliga (P.W.1). Therefore, we are considering the aspect of the First Information Report being concocted in greater details.

16. The main assault on the genuineness of the First Information Report was on the basis of the fact that the copy of the express First Information Report did not reach the Magistrate till 2-4-1996. For this purpose, we were taken through the original records by Mr. Ashok Kumar who painstakingly points out that strangely enough the statements of the witnesses Mallika (P.W.1) and Venkatesan (P.W.3) recorded under Sec.163 have been registered earlier in the register maintained for that purpose in the court of Judicial Magistrate, Arcot while the express First Information Report, which was supposed to have reached immediately or at least on the next day, is registered later on at serial No.582. From this learned counsel points out that this could only happen if in reality no First Information Report was actually given by Mallika (P.W.1) and it was only a concocted document particularly after the arrest of the accused persons on 2-4-1996. It has to be seen in this behalf that the accused persons were arrested only on 2-4-1996 when they had surrendered before the Judicial Magistrate, Arcot. The argument is clearly unacceptable. In the first place, merely because the express First Information Report is registered subsequently it does not mean that it did not reach earlier. It could be that the concerned clerk failed to note the documents chronologically. We ourselves saw the documents sent by the investigating officer. All those documents bear the date of 31-3-1996 which is signed in the green-ink by the Magistrate. The whole record in fact was received by the Magistrate has been initialled by him by putting the dates. It is unfortunate that the Public Prosecutor did not get that clarified. However, there is nothing to suggest that the said First Information Report was actually not signed. In this behalf, the evidence of the investigating officer is clear enough to suggest that the investigating officer had sent the express First Information Report. The claim of Kuppan (P.W.14) that he registered the offence and sent the express First Information Report to the Judicial Magistrate, Arcot has not been seriously challenged in the cross-examination. In this behalf it is to be seen that Kuppan (P.W.14) also said that after he sent the express First Information Report after obtaining the thumb impression of P.W.1 Mallikka on that he sent P.W.1 Mallika and Kumar for treatment to the doctor. When we see the evidence of Dr. Rajeswari (P.W.9), it is clear that P.W.1 Mallika and Kumar were produced before her for

treatment on 31-3-1996 only. Now it is obvious that the First Information Report could not have been sent on 2-4-1996 because it was already sent even before P.W.1 Mallika and Kumar were sent. They have actually been examined by P.W.9 Dr. Rajeswari on 31-3-1996 and there is no dispute about that. The sending of the First Information Report thus cannot be by any stretch of imagination be extended up to 2-4-1996.

17. In this behalf again it is liable to be seen that the investigating officer has received the information barely within two hours of the First Information Report having been registered and this officer has reached the spot at 5.30 a.m. on 31-3-1996. It is then that he first executed the inquest report (Ex.P-27) and also recorded the statements of the eye-witnesses, including Mallika (P.W.1) and Venkatesan (P.W.3). This was stated by Mallika (P.W.1) as also by Venkatesan (P.W.3). It is, therefore, difficult to imagine that the names were decided for the first time only on the arrest of the accused persons because indeed that would not have been possible because the accused persons must have surrendered during the court hours, i.e. after the day break. It is difficult to imagine that the investigating officer thought for the first time about the names and then prepared the First Information Report. Once the cloud on the First Information Report goes away then, the whole story becomes crystal clear that Mallika (P.W.1) had deposed about the names of the accused persons, the role played by them, etc. were stated barely within one and a half hours of the incident. That gives the greatest credence to the evidence of Mallika (P.W.1). It is difficult to discard the First Information Report as a concocted document. We are not prepared to grant that much of intelligence to Mallika (P.W.1). The evidence of Mallika (P,.W.1), therefore, stands completely corroborated firstly by the First Information Report and then by the evidence of Venkatesan (P.W.3) at least in respect of the manner in which the assault took place, the number of persons who took part in the assault, the weapons with which the assault was made, etc. The evidence of Dr. Lalitha (P.W.10) and the post mortem report which describes the injuries suffered by the deceased Shankar completely support the ocular testimony of Mallika (P.W.1). There are bound to be minor discrepancies in the evidence like the parts of the body selected by some accused persons for assaulting the deceased Shankar but, that will be of the minor nature and the core of evidence of Mallika (P.W.1) and Venkatesan (P.W.3) remains unshaken.

18. Learned counsel further tried to bring in some inconsistencies in the prosecution evidence. It was pointed out that there was no clothes on the dead body of Shankar when in fact, according to Mallika (P.W.1), he was wearing underwear at the time of the incident. We are not impressed by this argument at all. That the deceased Shankar was manhandled is a fact and that a lungi was found near the spot is also appears to be a fact. It is true that Ragothaman (P.W.4) and Ramachandran (P.W.6) have described the dead body of Shankar was stark naked while the investigating officer (P.W.17) had deposed that Shankar was clad in lungi. Whether her husband was wearing lungi or not at the time of assault would not be easy for Mallika (P.W.1) to tell. Her assertion may be in the nature of a aberration. It could be that Shankar was clad in lungi and the lungi got unfurled because of the assault. That could be the reasonable explanation.

19. Another contention was that though the cot was drenched with blood, it was not seized by the investigating officer and that showed the tainted investigation. It is true that if the cot was stained with blood, it would have been better for the investigating officer to seize the same. However, the question was not whether the deceased was murdered on a cot or not – the question was whether he was actually murdered by the accused persons. Non-seizure of the cot would not, in our opinion, bring the whole prosecution into suspicion.

20. It was contended by the learned counsel that Mallika's (P.W.1) version that the first injury was inflicted on the neck of the deceased was obviously false as Dr. Lalitha (P.W.10) deposed that there were no injuries on either side of the neck. In that sense, the learned counsel says that the evidence of Mallika (P.W.1) is not corroborated by the medical evidence. One fails to understand as to how an omission was put to the witness Mallika (P.W.1) in respect of the portion which she had not deposed in her examination-in-chief. She had merely stated in her examination-in-chief that Shankar, while he was sitting on the cot, was cut on the neck. It was only in the crossexamination, the learned counsel took out that the first cut was inflicted on Shankar on the neck and that she had so stated in Ex.P-1. It is not understood as to how all this was allowed to be put in the cross-examination much less in the nature of an omission. The omission has to be in respect of the examination-in-chief where the witness had not stated anything specifically about the neck. All that she had stated was that the first accused inflicted cut injuries on the rear portion of the neck. Considering the opportunity of the witness to watch and her obvious inability to describe the precise parts of the body, we do not think that there is anything much to be attached to this so-called inconsistency. The contention, therefore, is rejected.

21. Much was said about the evidence of Venkatesan (P.W.3) also. It was suggested that he had fled away from the scene after seeing the accused persons wielding the knives and other weapons. We find that the sessions Judge has not relied on the evidence of Venkatesan (P.W.3). We only say that the evidence of this witness can be used for the limited purpose, which we have done.

22. It was also tried to be suggested that the prosecution had presented different versions, which were conflicting, in respect of the assault inasmuch as the evidence of Mallika (P.W.1) was contradicted by the evidence of Venkatesan (P.W.3). We have closely seen the said deposition and we do not find think that there is any conflicting version presented by the prosecution.

23. The argument was also directed towards the reliability of the information leading to the recovery of the weapons at the instance of the accused persons. We have closely seen Exs.P-20, P-21, P-22 and P-23. Much argument was directed against the evidence of Kannadurai (P.W.15), Balakrishnan (P.W.16) and Durai Muthusamy (P.W.17). It was tried to be suggested that there were inherent inconsistencies in the evidence. We have also seen the evidence of Ramachandran (P.W.6) in respect of the recovery of

broken rice-pounder (M.O.2), cyclechain (M.O.3) and blood-stained stick (M.O.6). We agree with the sessions judge that none of these witnesses could be shaken in the crossexamination and the discovery stood proved. At any rate, the most important piece of the evidence is that the discovered articles were stained with human blood. We would expect some explanation on that account but, there was none. Some discrepancy regarding the accused having or not having signed the exhibits was also suggested. However, in our opinion, the sessions judge has correctly read the evidence and has chosen to accept that the accused persons discovered the weapons. We do not see any reason to differ with the said finding.

24. In short, we completely agree with the judgment of the trial court when the trial court recorded the convictions for the offences under Secs.148, 324 read with 149 and simpliciter convictions of accused 4 and 5 under Sec.324 as also under Sec.427. The last-mentioned conviction was on account of the action on the part of the accused persons damaging the autorickshaw. We were not addressed on this question at all. The judgment of the trial court is hereby confirmed. The appeal has no merits and has to be dismissed. It is accordingly dismissed.

Index:Yes
Website:Yes

Jai

To:

1. The Public Prosecutor, High Court, Chennai
2. The Asst. Director of Prosecution, Vellore
3. The District Collector, Vellore
4. The Superintendent of Police, Vellore
5. The Judicial Magistrate, Arcot
6. The Director General of Police, Chennai
7. The Superintendent of Police, Central Prison,